

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTONIO PORTER,

Plaintiff,

v.

CITY OF SEATTLE, et al.,

Defendants.

Case No. 2:23-cv-293-JNW-TLF

ORDER GRANTING MOTION TO
COMPEL AND ORDER
GRANTING MOTION TO EXTEND
DISPOSITIVE MOTION DEADLINE

This matter comes before the Court on defendants' motion to compel discovery and request for an extension of the deadline to file dispositive motions. Dkt. 25. Plaintiff did not file a response to the motion. For the reasons set forth herein, defendants' motion is granted. The initial pretrial scheduling order Dkt. (23) is stricken. The Court has issued an amended pretrial scheduling order.

DISCUSSION

I. Motion to Compel

Pursuant to Fed. R. Civ. P. 37, a party may move for an order compelling a party to appropriately respond to discovery when a party fails to produce documents or permit inspection as required by Rule 34. Fed. R. Civ. P. 37(a)(3)(B)(iv). Rule 34 allows a party to serve on another party a request for production within the scope of Rule 26(b). Fed. R. Civ. P. 34(a). Rule 26(b)(1) states:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter

1 that is relevant to any party's claim or defense and proportional to the
2 needs of the case, considering the importance of the issues at stake in the
3 action, the amount in controversy, the parties' relative access to the
4 relevant information, the parties' resources, the importance of the
5 discovery in resolving the issues, and whether the burden or expense of
6 the proposed discovery outweighs its likely benefit. Information within this
7 scope of discovery need not be admissible in evidence to be
8 discoverable.

9 Under Fed. R. Civ. P. 33, the purpose of interrogatories is to "limit and clarify the
10 issues for the parties in preparation for further trial proceedings." *Soria v. Oxnard Sch.*
11 *Dist. Bd of Trs.*, 488 F.2d 579, 587 (9th Cir. 1973). If the responding party objects, any
12 objection must be plain and specific, to allow the court to understand the specific
13 objectionable characteristic being asserted by the responding party. *Davis v. Fendler*,
14 650 F.2d 1154, 1160 (9th Cir. 1981).

15 According to Fed. R. Civ. P. 34, requests for production, including requests for
16 electronically stored information (ESI) and tangible things, must be responded to either
17 by "stat[ing] that inspection and related activities will be permitted as requested or
18 stat[ing] with specificity the grounds for objecting to the request, including the reasons."
19 Fed. R. Civ. P. 34(b)(2)(C). If the producing party objects to part of a request, the
20 producing party is required to include in the objection, a statement that specifies which
21 part is being objected to, "and permit inspection of the rest." *Id.*

22 A party is only required to produce documents and records within their
23 "possession, custody or control." *United States v. International Union of Petroleum &*
24 *Industrial Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989) (citing Fed. R. Civ. P. 34(a)).
25 The party seeking production of the document bears the burden of proving that the
opposing party has possession of the document or evidence requested. *Id.* Additionally,

1 the moving party bears the burden of showing that the discovery responses were
2 incomplete. *Daiflon, Inc. v. Allied Chemical Corp.*, 534 F.2d 221, 227 (10th Cir. 1976).

3 A district court has broad discretion to grant or deny a motion to compel. See
4 *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). Under Fed. R. Civ. P. 26(b)(2)(C),
5 the Court is required to limit the frequency or extent of discovery if the discovery
6 requested is “unreasonably cumulative or duplicative, or can be obtained from some
7 other source that is more convenient, less burdensome, or less expensive,” or if the
8 requesting party “has had ample opportunity to obtain the information by discovery in
9 the action,” or if the requesting party is seeking information that is outside of the scope
10 of discovery under Rule 26(b)(1).

11 **a. Meet and Confer Requirement**

12 Defendants assert that a meet and confer, as required by LCR 37, is not possible
13 because plaintiff is incarcerated. Dkt. 26 at 2. However, defendants did not submit a
14 certification that they attempted to meet and confer with plaintiff in good faith in regard
15 to the Interrogatories and Requests for Production prior to filing the motion as required
16 by LCR 37(a)(1) and as stated in the scheduling order. See Dkt. 23 at 2.

17 Plaintiff’s status of incarceration is not a sufficient reason for the failure to attempt
18 to meet and confer prior to filing a motion with the Court. Defendants acknowledge they
19 were previously able to resolve a discovery issue without the Court’s intervention by
20 sending a reminder letter to plaintiff. Dkt. 25 at 4, Dkt. 26 at 2. The Court will consider
21 defendants’ motion on the merits, in the interest of speeding up the process of discovery
22 – but the parties are on notice that, in the future, any additional discovery motions will
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1 be stricken if the motion does not include a certification that a good faith attempt to meet
2 and confer has been made. See Dkt. 23 at 2, LCR 37(a)(1).

3 **b. Merits**

4 Defendants' motion requests an order compelling plaintiff to respond to the City's
5 Interrogatories and Requests for Production. Dkt. 25. Defendants argue that they
6 cannot prepare for summary judgment without the requested evidence. *Id.* at 3-4.
7 Specifically, they argue they cannot (1) establish the elements of negligence without
8 identifying whether plaintiff has any preexisting conditions and the extent of his injury,
9 (2) evaluate plaintiff's treatment at the hospital, where he claims he was racially
10 discriminated against, or (3) establish whether plaintiff suffered severe emotional
11 distress. Dkt. 25 at 3. Plaintiff did not respond to the motion; the Court considers the
12 failure to respond as an admission that the motion has merit. LCR 7(b)(2). Because
13 defendants have described ways in which the requested information pertains to a matter
14 relevant to a claim or defense, the Court GRANTS the motion to compel.

15 **II. Motion for Extension**

16 Defendants state they are unable to prepare for trial or summary judgment
17 because plaintiff has not produced any evidence. Dkt. 25 at 2. A scheduling order may
18 only be modified for good cause and with the Court's consent. Fed. R. Civ. P.
19 16(b)(4). Under the stringent requirement of good cause in Fed. R. Civ. P. 16(b), the
20 Court considers the diligence of the party seeking the amendment. *Johnson v.*
21 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Good cause for
22 modification of pretrial order's scheduling deadline means that scheduling deadlines
23 cannot be met despite the diligent efforts of the party seeking the extension;

1 carelessness is not compatible with finding of diligence and offers no reason for grant of
2 relief. *Id.*; *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.
3 2002) (If the party seeking the modification was not diligent, the inquiry should end and
4 the motion to modify should not be granted).

5 Because plaintiff has not responded to defendants' Interrogatories or Requests
6 for Production, and defendants are still awaiting the medical records from Harborview
7 Medical Center, the Court finds good cause to grant an extension of the dispositive
8 motion deadline. The Court has issued an amended pretrial scheduling order along with
9 this order.

10 CONCLUSION

11 For the foregoing reasons, defendants' motion to compel and motion for
12 extension of the dispositive motion deadline are GRANTED.

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14 Dated this 14th day of March, 2024.

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18 Theresa L. Fricke
19 United States Magistrate Judge
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